

MJ:mgs 07/21/03 198093  
PATENT

Attorney Reference Number 2242-59212  
Application Number 09/878,128

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Reichow et al.

Art Unit: 2873

Application No. 09/878,128

CERTIFICATE OF MAILING

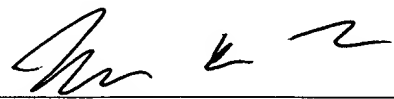
Filed: June 7, 2001

For: **ACTIVITY-SPECIFIC OPTICAL FILTERS AND  
EYEWEAR USING SUCH FILTERS**

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service on July 21, 2003, as First Class Mail in an envelope addressed to: ATTENTION OFFICE OF PETITIONS, MAIL STOP PETITIONS, COMMISSIONER FOR PATENTS, PO BOX 1450, ALEXANDRIA, VA 22313-1450.

Examiner: Scott J. Sugarman

Date: July 21, 2003

  
\_\_\_\_\_  
Attorney for Applicant

ATTENTION OFFICE OF PETITIONS  
MAIL STOP PETITIONS  
COMMISSIONER FOR PATENTS  
PO BOX 1450  
ALEXANDRIA, VA 22313-1450

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED FOR  
FAILURE TO NOTIFY THE OFFICE OF A FOREIGN OR INTERNATIONAL FILING  
(37 CFR 1.137(f))**

The above-identified application may have become abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational international treaty that requires publication of applications eighteen months after filing. If abandoned, the date of abandonment is the day after the expiration date of the forty-five (45) day period set in 35 U.S.C. 122(b)(2)(B)(iii).

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**OFFICE OF PETITIONS**

**PURSUANT TO 37 C.F.R. 1.137(f), APPLICANT HEREBY PETITIONS FOR  
REVIVAL OF THIS APPLICATION UNDER 37 C.F.R. 1.137(b)**

**1. Petition Fee**

☐ Small entity-fee \$\_\_\_\_\_ (37 C.F.R. 1.17(m)). Applicant claims small entity status. See 37 C.F.R. 1.27.

☒ Other than small entity – fee \$1,300.00 (37 C.F.R. 1.17(m))

**2. Notice of Foreign or International Filing (35 U.S.C. 122(b)(2)(B)(iii) and  
37 C.F.R. 1.213(c))**

Subsequent to the filing of the above-identified application, a request to rescind the nonpublication request was filed without a notice of foreign filing and an application was filed in another country, or under a multinational international treaty (e.g., filed under the Patent Cooperation Treaty), that requires publication of applications eighteen months the earliest priority date. The filing date of the subsequently-filed foreign or international application is January 23, 2002.

**STATEMENT:** The entire delay in filing the notice of a foreign or international filing from any applicable due date for the required notice until the filing of a grantable petition under 37 C.F.R. 1.137(b) was unintentional.

Enclosures: ☐ Fee payment  
☐ Additional sheets containing statements establishing unintentional delay  
☐ Other:

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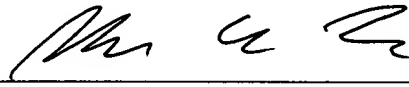
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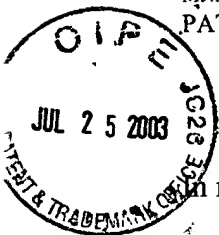
- ☒ Please charge this fee and any additional fees that may be required in connection with filing of this Petition for Revival of an Application for Patent Abandonment for Failure to Notify the Office of a Foreign or International Filing (37 C.F.R. 1.137(f)) to Deposit Account 02-4550.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By   
Michael D. Jones  
Registration No. 41,879

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 226-7391  
Facsimile: (503) 228-9446



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Attorney for Applicant

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COMMISSIONER FOR PATENTS  
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**COMMUNICATION REGARDING RESCINDED NONPUBLICATION REQUEST  
AND PETITION FOR REVIVAL OF APPLICATION IF NECESSARY**

This communication is being filed in response to the notification published in the Official Gazette on May 6, 2003, concerning the notice requirements of 35 U.S.C. 122. The Official Gazette notice reminded applicants that a request to rescind a nonpublication request is not itself a notice of foreign filing, and that an additional notice of foreign filing may be necessary in certain circumstances.

For the reasons discussed below, the Assignee of the above-referenced application believes that the notification requirements of 35 U.S.C. 122 have been fully met in this application.

If the Patent and Trademark Office (the "PTO") determines that an additional notice of foreign filing was required for this application, however, the Assignee hereby requests the Commissioner to accept the enclosed Notice of a Foreign or International Filing and to find that the delay in submitting the notice was unintentional and that the application was never abandoned pursuant to the last phrase of 35 U.S.C. 122(b)(2)(B)(iii). In the alternative, the

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**OFFICE OF PETITIONS**

Assignee hereby requests the Commissioner to accept the enclosed Petition for Revival of the application as being unintentionally abandoned.

The Commissioner is authorized to charge any necessary fees to the deposit account identified below.

### **BACKGROUND**

This application was filed on June 7, 2001, with an accompanying request for nonpublication under 35 U.S.C. 122(b)(2)(B)(i). On January 30, 2002, the request for nonpublication was rescinded using the form authorized by the PTO (Form PTO/SB/36 (11-00)). A copy of this request and of the postcard from the PTO acknowledging the receipt of the request are enclosed as Exhibits A and B. On January 23, 2002 a corresponding PCT application was filed.

### **THE ASSIGNEE HAS COMPLIED WITH 35 U.S.C. 122**

If the Commissioner determines that a separate notice of foreign filing was required, it is the Assignee's understanding that the PTO considers a request to rescind a nonpublication request as the proper notice of foreign filing. This understanding derives from the "Request to Rescind Previous Nonpublication Request, 35 U.S.C. 122(b)(2)(B)(ii)" form endorsed and distributed by the PTO in 2001. In particular, Form PTO/SB/36 (4-01), which is attached as Exhibit C, includes the following note: "Filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or International filing required by 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five days [sic] (45) days after the date of filing of such foreign or international application." The January 30, 2002, request to rescind the nonpublication request submitted in this application was nearly identical to Form PTO/SB/36 (4-01), but did not contain the note. The note, however, is not an affirmative statement by the signing party, but an explanation of how the PTO treats a request to rescind a nonpublication request. The Assignee therefore submits that the January 30, 2002, request to rescind the nonpublication request was a proper notice of a foreign or international filing under 35 U.S.C. 122(b)(2)(B)(iii).

#12

According to 35 U.S.C. § 122(b)(2)(B)(iii), a patent applicant must notify the Director not later than 45 days after filing an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months **after filing** (emphasis added). PCT applications do not require publication in this manner. Publication according to the Patent Cooperation Treaty is provided as follows:

[T]he international publication of the [PCT] application shall be effected promptly after the expiration of 18 months from the priority date of that application.  
Article 21 PCT (emphasis added).

Thus, the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) do not apply to the corresponding PCT application as this application must be published about 6 months from its filing date, not after the 18 month period set out in 35 U.S.C. § 122.

**IF NOTICE UNDER 35 U.S.C. 122(b)(2)(B)(iii) WAS NECESSARY,  
THE APPLICATION IS NOT ABANDONED**

The Assignee was unaware of any potential problems with this application until sometime on or about May 6, 2003, when the relevant notice was published in the Office Gazette. Accordingly, any delay in filing a proper notice was unintentional. If it is determined that a notice of foreign filing was required under 35 U.S.C. 122(b)(2)(B)(iii), the Assignee hereby requests the Commissioner to accept the enclosed Notice of a Foreign or International Filing and to find that the application was never abandoned as the delay in providing the Notice was unintentional. The Commissioner may make such a finding under 35 U.S.C. 122(b)(2)(B)(iii), which provides that “[a] failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.” The word “unless” in this subsection conveys the meaning that no abandonment occurs when the delay in providing the foreign filing notice was unintentional.

**IF THE APPLICATION IS ABANDONED,**  
**THE ASSIGNEE REQUESTS REVIVAL**

If it is determined that the application has become abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii), the Assignee hereby requests the Commissioner to accept the enclosed Petition for Revival under 37 C.F.R. 1.137(b), which includes the requisite notice of a foreign or international filing.


The Commissioner is hereby authorized to charge any fees that may be required in connection with this communication, including any petition fee to Account No. 02-4550. A copy of this communication is enclosed.

If any further information is required, or if the Commissioner has any questions in connection with this communication, the Commissioner is invited to call the undersigned.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By



Michael D. Jones  
Registration No. 41,879

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 226-7391  
Facsimile: (503) 228-9446

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Reichow et al.

Art Unit: 2873

Application No. 09/878,128

Filed: June 7, 2001

For: ACTIVITY-SPECIFIC OPTICAL FILTERS AND  
EYEWEAR USING SUCH FILTERS

Examiner: Unknown

Date: January 30, 2002

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service on January 30, 2002 as First Class Mail in an envelope addressed to: COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231.



Attorney for Applicant

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WASHINGTON, D.C. 20231

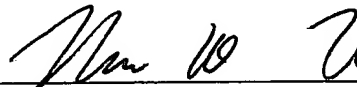
**REQUEST TO RESCIND PREVIOUS  
NONPUBLICATION REQUEST UNDER 35 U.S.C. 122(b)(2)(B)(ii)**

I hereby **rescind** the previous request that the above-identified application not be published under 35 U.S.C. 122(b).

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By



Michael D. Jones

Registration No. 41,879

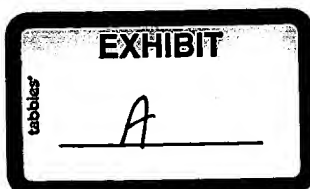
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Facsimile: (503) 228-9446

cc: Docketing

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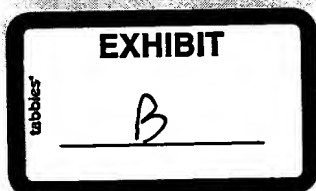
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CLIENT/MATTER NO. <u>2242-59212</u>		ATTY/SEC <u>MDJ/mgs</u>	
INVENTOR(S) <u>Reichow et al.</u>			
APP. <u>091878, 128</u>		FILING DATE <u>6-7-02</u>	
The following, due <u>      </u> , mailed <u>1/30/02</u>			
by First Class Mail, was received in the U.S. PTO on the date stamped hereon:			
<input type="checkbox"/> Amendment <input type="checkbox"/> Marked Up Claims/Spec. <input type="checkbox"/> After Final Rejection		<b>RECEIVED</b> FEB 19 2002 Office of Patent Publication Director's Office	
<input type="checkbox"/> Extension of Time/Extension Fee for <u>      </u> Months			
<input type="checkbox"/> Notice to File Missing Parts - Date <u>      </u>		<input type="checkbox"/> Late Fee <u>      </u>	
<input type="checkbox"/> Notice to File Corrected App. Papers - Date <u>      </u>		<input type="checkbox"/> Notice-Allowability <u>      </u>	
<input type="checkbox"/> Comb. Dec./POA <input type="checkbox"/> Sht(s) Drawings <u>      </u>		<input type="checkbox"/> Sht(s) Drawings <u>      </u>	
<input type="checkbox"/> Issue Fee Transmittal (Form PTOL-85b)		<input type="checkbox"/> Sequence of Invention <u>      </u>	
<input type="checkbox"/> Supp. Dec. <input type="checkbox"/> Issue/Adv. Order fees <u>      </u>		<input type="checkbox"/> Stmt in Comp. <input type="checkbox"/> Disk <u>      </u>	
<input type="checkbox"/> IDS <input type="checkbox"/> Form PTO-1449/Ref. <u>      </u>		<input type="checkbox"/> Petition <u>      </u>	
<input type="checkbox"/> Assignment to: <u>      </u> <input type="checkbox"/> Recordal Sheet <u>      </u>			
<input checked="" type="checkbox"/> Transmittal Ltr. + <input checked="" type="checkbox"/> 1 <u>      </u> 2 copy(ies)		<input type="checkbox"/> Request for Corrected Filing Receipt <u>      </u>	
<input type="checkbox"/> Check No. <u>      </u> for \$ <u>      </u>		<input checked="" type="checkbox"/> Deposit Acct. 02-4550 Authority <u>      </u>	
<input checked="" type="checkbox"/> Request to Rescind Previous Nonpublication Request <u>      </u>			



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**REQUEST TO RESCIND PREVIOUS  
NONPUBLICATION REQUEST  
35 U.S.C. 122(b)(2)(B)(ii)**

Application Number

Filing Date

First Named Inventor

Title

Atty Docket Number

Group Art Unit

Examiner

I hereby **rescind** the previous request that the above-identified application not be published under 35 U.S.C. 122(b).

Date

Signature

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Typed or printed name

**OFFICE OF PETITIONS**

This request must be signed in compliance with 37 CFR 1.33(b).

Note: Filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or international filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five days (45) days after the date of filing of such foreign or international application. See 37 CFR 1.137(f) if a notice of subsequent foreign or international filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is **not** filed within forty-five days (45) days after the date of filing of the foreign or international application.

**CERTIFICATE OF MAILING OR TRANSMISSION**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner For Patents, Box RCE, Washington, DC 20231, or facsimile transmitted to the U.S. Patent and Trademark Office on:

Name (Print/Type)

Signature

Date

Burden Hour Statement: This collection of information is required by 37 CFR 1.213(b). The information is used by the public to rescind a previously filed request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that rescission). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

**EXHIBIT**

tabbies

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PATENT



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Attorney for Applicant

ATTENTION OFFICE OF PETITIONS  
MAIL STOP PETITIONS  
COMMISSIONER FOR PATENTS  
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**NOTICE OF A FOREIGN OR INTERNATIONAL FILING  
UNDER 35 U.S.C. 122(b)(2)(B)(iii)**

Subsequent to the filing of the above-identified application, a request to rescind the nonpublication request was filed with a notice of foreign filing and an application was filed in another country, or under a multinational international treaty (e.g., filed under the Patent Cooperation Treaty), that requires publication of applications eighteen months after filing. The filing dates of the subsequently-filed foreign or international applications are January 23, 2002.

The entire delay in filing the notice of a foreign or international filing from any applicable due date for the required notice until the filing of this notice was unintentional.

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Page 1 of 2

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Attorney Reference Number 2242-59212  
Application Number 09/878,128

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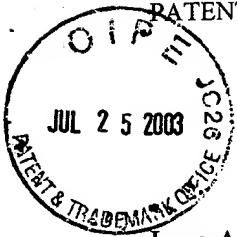
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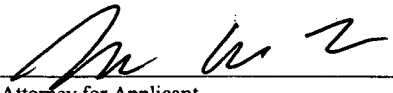
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Examiner: Scott J. Sugarman

Date: July 21, 2003

  
Attorney for Applicant

TRANSMITTAL LETTER

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Enclosed for filing in the application referenced above are the following:

- ☒ Communication Regarding Rescinded Nonpublication Request and Petition for Revival of Application if Necessary
- ☒ Notice of a Foreign or International Filing Under 35 U.S.C. 122(b)(2)(B)(iii)
- ☒ Petition for Revival of an Application for Patent Abandonment for Failure to Notify the Office of a Foreign or International Filing (37 CFR 1.137(f))
- ☒ Other than small entity – fee \$1,300.00 (37 C.F.R. 1.17(m))
- ☒ Please charge our Deposit Account No. 02-4550 in the amount of \$1,300.00. Two copies of this sheet are enclosed.

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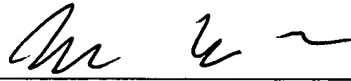


Please return the enclosed postcard to confirm that the items listed above have been received.

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